

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

APR -9 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|------------------------|---|----------------------------|
| In re the Marriage of: |) | |
| |) | |
| RANDALL B. PFEIFER, |) | 2 CA-CV 2012-0126 |
| |) | DEPARTMENT A |
| Petitioner/Appellant, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| and |) | Not for Publication |
| |) | Rule 28, Rules of Civil |
| DEBRA K. PFEIFER, |) | Appellate Procedure |
| |) | |
| Respondent/Appellee. |) | |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100DO201100322

Honorable Steven J. Fuller, Judge

AFFIRMED

Ritter Law Group, L.L.C.
By Matthew A. Ritter

Florence
Attorneys for Petitioner/Appellant

Law Offices of Janice M. Palmer, P.C.
By Janice M. Palmer

Chandler
Attorney for Respondent/Appellee

E C K E R S T R O M, Presiding Judge.

¶1 In this marital dissolution action, appellant Randall Pfeifer challenges the trial court's division of property. Specifically, he contends the court undervalued the retirement account of the appellee, Debra Pfeifer, and improperly characterized his income earned while the dissolution was pending as rental income from community property. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence presented below in the light most favorable to upholding the decree. *Spector v. Spector*, 94 Ariz. 175, 179, 382 P.2d 659, 661 (1963). The parties had been married twelve years when Randall filed and served a petition for dissolution in February 2011. During their marriage, Debra had invested in a retirement account that the trial court found to be community property. The value of the account changed over time due to fluctuations in the market. In the court's findings, it noted that "[n]o evidence was presented as to the value of the account on the date of service of the petition for dissolution." The court therefore determined the account's value based on an account statement that both parties had admitted into evidence. The document showed that the account's value in January 2011 was \$69,755.

¶3 In regard to Randall's income after filing the petition, he testified he was employed by a steel works company that provided him both wages and rental income. By his estimate, approximately eighty percent of his income came from his work as a welder; the remaining twenty percent was rental income the company paid for storing equipment on the Pfeifers' marital property. Randall's income tax returns, however,

showed that for the past four years he had reported all of his income from this company as rental storage income.

¶4 Noting this conflict in the evidence, the trial court credited the income tax returns over Randall's own testimony and thus characterized all his income as community property. After determining the Pfeifers' expenses from renting their property, the court then calculated the net rental income while the dissolution was pending. Based on these and other findings, the court's decree required that Randall pay Debra \$30,515 in order to make an equitable property division. This appeal followed.

Retirement Account

¶5 Randall first argues "the trial court improperly construed the value of [Debra]'s retirement account to be \$69,755," asserting this valuation is "unsupported by any substantial or reasonable evidence." This contention is without merit. "Where there is evidence to support the judgment, it must be affirmed on appeal." *DeForest v. DeForest*, 143 Ariz. 627, 634, 694 P.2d 1241, 1248 (App. 1985); *accord Yano v. Yano*, 144 Ariz. 382, 384, 697 P.2d 1132, 1134 (App. 1985). Here, the court expressly relied on Randall's own documentary evidence (exhibit number seven) to determine the value of Debra's investment account. As noted above, that document provided that the value of the account was \$69,755 near the time when Randall filed and served the petition for dissolution. The court's valuation, therefore, was taken from and plainly supported by the record.

¶6 Ignoring the fact that his own evidence supplied the figure accepted by the trial court, Randall insists that the court instead should have valued the account at

\$72,970.99, which exhibit seven showed as the account's value in July 2011. Although he has not specifically developed an argument on this point, we note that a court may use alternative valuation dates when making an equitable division of property. *See Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (App. 1986). Thus, it was legally appropriate for the court to base its valuation on the date the petition was filed or served. Because the record does not otherwise suggest the court abused its "wide discretion" in selecting the valuation date here, *id.*, at 242-43, 731 P.2d at 607-08, we find no basis to disturb the court's finding.

Income

¶7 Randall next argues the trial court erroneously determined that his income earned after filing the petition for dissolution was "comprised entirely of rental income on the marital property." A trial court's decision regarding the nature and division of property will not be overturned on appeal unless the court has abused its discretion. *Day v. Day*, 20 Ariz. App. 472, 473, 513 P.2d 1355, 1356 (1973). When making this assessment, "[a]ll reasonable inferences must be taken in favor of sustaining the judgment and if there is any evidence to support the judgment it must be affirmed." *Id.* "[W]e will not disturb the findings and judgment of the trial court based upon conflicting evidence." *Kingsbery v. Kingsbery*, 93 Ariz. 217, 221, 379 P.2d 893, 895 (1963).

¶8 Randall's tax returns provided the evidence necessary for the trial court to characterize all of his income as community property from rental payments. Randall correctly cites *Porter v. Porter* for the proposition that tax returns are not dispositive on the issue of how to characterize income. 67 Ariz. 273, 284, 195 P.2d 132, 139 (1948),

disapproved on other grounds by Cockrill v. Cockrill, 124 Ariz. 50, 53-54, 601 P.2d 1334, 1337-38 (1979). But the court did not treat Randall's tax returns as dispositive, nor did it estop him from presenting evidence that conflicted with the tax returns, which *Porter* would prohibit. *See id.* Rather, the court properly considered the tax returns and weighed them against the contrary evidence indicating Randall had earned most of his income as wages from his labor.

¶9 “The evidentiary value of [a party]’s action in listing his income as community for income tax purposes, in the light of all the circumstances as described by the evidence, is for the trial court to determine.” *Id.* Although Randall presents a variety of arguments about why the tax returns should not have been credited by the court, this was ultimately a factual issue for that court to resolve. We do not reweigh the evidence on appeal. *Whittemore v. Amator*, 148 Ariz. 173, 175, 713 P.2d 1231, 1233 (1986). Thus, we must affirm the court’s determination on this matter.¹

¶10 Randall also incorrectly relies on *Barr v. Petzhold*, 77 Ariz. 399, 273 P.2d 161 (1954), to suggest that an evidentiary presumption operated in his favor. In that case,

¹We need not separately address Randall’s contention that the court “unconscionably violated the principles of equity requisitely endemic to the distribution of community property,” as this argument challenging the fairness of the property division presumes the court erred in characterizing his income. We note, however, that Randall has improperly cited a memorandum decision of this court several times to support his argument, and his ostensible reason for such citations—“clarify[ing] the rule of the case”—is plainly not permitted by our rules. *See* Ariz. R. Civ. App. P. 28(c) (“Memorandum decisions shall not be regarded as precedent nor cited in any court except for (1) the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) informing the appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review.”).

our supreme court affirmed a trial court's determination that certain property could not be reached by a husband's separate creditor. *Id.* at 409-10, 273 P.2d at 167. In so ruling, our high court observed that when doubt exists about whether income is the result of a spouse's skill, labor, or management during the marriage, as opposed to an inherent return on a separate investment, such doubt is generally resolved by finding the income the product of community effort, because there is a "strong presumption . . . that all earnings during coverture are community in nature." *Id.* at 409, 273 P.2d at 167. Here, Randall sought to prove the separate character of income earned after he had filed the petition for dissolution. Thus, neither the presumption of community property nor any other presumption from *Barr* supports his position. Accordingly, we find no grounds to disturb the trial court's findings.

Attorney Fees

¶11 As she did below, Debra requests an award of attorney fees and costs pursuant to A.R.S. § 25-324(A). The trial court denied Debra's request for fees under this provision, and she has offered no explanation why an award should now be granted on appeal. She simply asks for an award "in the event that she is the prevailing party." In the exercise of our discretion, *see Magee v. Magee*, 206 Ariz. 589, ¶ 22, 81 P.3d 1048, 1052 (App. 2004), we deny the request.²

²Although Debra alternatively cites A.R.S. § 12-348(A)(1) as a basis for an award, this provision only applies to "[a] civil action brought by the state or a city, town or county"; it does not apply to a marital dissolution action.

Disposition

¶12 For the foregoing reasons, the decree of dissolution is affirmed.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

/s/ *Michael Miller*

MICHAEL MILLER, Judge